

ACTION-Housing inc.

ALLEGHENY COUNCIL TO IMPROVE OUR NEIGHBORHOODS

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30 November 2010

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 205521

Re: Comment on Proposed Regulatory Changes
Regulation Z – Truth in Lending (Docket # R-1390)

Gentlemen:

Proposed changes to the regulations under the Truth-In-Lending Act (TILA) modifying *the parties' obligations when a consumer rescinds*, particularly treatment of lien position under the extended exercise of the right of rescission, are hostile to consumers, wrong-headed, and should be abandoned.

The benefits of the current provision are two-fold: 1) that the consumer is fully and accurately aware of the cost of the capital they are borrowing, and 2), that the lender – under threat of losing his/her security interest – accurately discloses those costs to the consumer.

Under the process proposed for *rescission outside of a court proceeding* vacating the security interest as a remedy for the consumer would be effectively eliminated. It is naïve to believe that lenders, servicers or investors, who have proved so intransigent in making reasonable modifications for homeowners in danger of foreclosure, would ever *admit* to an under-disclosure and voluntarily agree to cancel a transaction if it resulted in relinquishing accumulated interest and fees that they might otherwise attempt to collect in a completed foreclosure.

The likely outcome for homeowners who attempt this remedy outside of court – even if they are able to secure alternate financing with which to pay off the rescinded loan - is that they would be met with the same obfuscation and denial by servicers that they are currently facing in the various modification schemes.

The scenario outlined in the proposed regulation would leave borrowers with a legitimate claim under TILA asking lenders to accept payment-in-full for less than the full outstanding balance of the loan, in effect, a voluntary short payoff. It does not seem likely that any lender would agree to this scenario *except* under the threat of greater financial loss. Homeowners, therefore, would be trapped, unable to resolve a TILA violation against a lender that has all the incentive to deny the claim, and the resources to make pressing that claim a daunting – if not impossible – task.

In addition, with the foreclosure and unemployment rates still high, many homeowners will find it difficult to find alternative financing for even the reduced principal of a rescinded loan. If the

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lien remains fully intact and actionable, and the homeowner cannot exercise the right of rescission due to a lack of alternate financing, then the burden will fall almost entirely on the borrower *even if the lender was actually in error*. This would be the equivalent imprisoning the victim of a crime in prison based solely on his/her proximity to the crime. No one would accept such a ludicrous position. Lenders that have under-disclosed the cost of credit should continue to bear the consequences of their careless work.

The inability of the borrower to secure new credit from a new lender in order to pay off a rescinded loan does not diminish the lender's violation of the regulation and should not abrogate the borrower's right to a remedy under TILA.

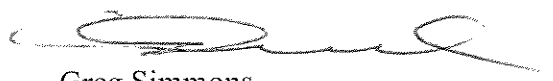
For those borrowers who are unable to obtain the necessary credit to pay off a rescinded loan, the threat of vacating a lien is a strong incentive for the existing lender to modify the loan to cure the TILA violation. This is a better solution for all parties, leaving the lender with a diminished but secured and performing asset, and the borrower with his home. The alternative would result in higher net losses to the financial institution and, in cases where delinquency and foreclosure are imminent, an avoidable disruption to the homeowner's life.

Lenders and investors almost certainly view additional short-term protection for their security interest favorably, particularly as TILA is being used increasingly as a foreclosure defense. However, this position is in fact short-sighted. Those same lenders and investors would suffer the greater losses associated with a foreclosure action, including remarketing the property, maintenance, taxes and depreciation than if they cured the TILA violation by modifying the loan. Modifying a loan or accepting a short-payoff under a rescission is almost certainly a less costly alternative.

Shoddy lending practices, including the poor and misrepresentative disclosure of terms, were a major factor in causing the foreclosure crisis. Removing the threat of lien vacancy would give lenders a green light to under-disclose the costs of credit with few remaining financial consequences to act as a deterrent. Weakening controls on those practices now would be counterproductive.

We would encourage the Federal Reserve Board of Governors to leave the existing remedy, including the threat of vacating a lien under extended rescission, intact within the regulation as the best consumer protection currently available under the law.

Sincerely,



Greg Simmons
Development and Compliance Officer
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GBS/CC Joseph Ott, Ruth Clevenger, Lawrence Swanson